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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re M.C. et al., Persons Coming Under the
Juvenile Court Law.

STANISLAUS COUNTY COMMUNITY
SERVICES AGENCY,

Plaintiff and Respondent,

v.

J.C. et al.,

Defendants and Appellants.

F077937

(Super. Ct. Nos. 517538, 517539)

OPINION

THE COURT*

APPEAL from an order of the Superior Court of Stanislaus County. Ann Q.
Ameral, Judge.

Linda J. Conrad, under appointment by the Court of Appeal, for Defendant and
Appellant, J.C.

Marissa Coffey, under appointment by the Court of Appeal, for Defendant and
Appellant, A.M.

John Doering, County Counsel, and Maria Elena R. Ratliff, Deputy County
Counsel, for Plaintiff and Respondent.

* Before Poochigian, Acting P.J., Meehan, J. and Snauffer, J.

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INTRODUCTION

A Welfare and Institutions Code¹ section 300 petition was filed on behalf of M.C. and A.C. At a section 366.26 hearing, the parental rights of mother (A.M.) and father (J.C.) were terminated. Father contends the juvenile court erred in terminating his parental rights because the evidence established the beneficial parent-child relationship exception as to him.

Mother's appeal raises no issues as to her termination of parental rights. However, she asserts that if the termination of father's parental rights is reversed, her parental rights must also be reinstated.

We affirm.

FACTUAL AND PROCEDURAL SUMMARY

On March 15, 2016, the Stanislaus County Community Services Agency (agency) received a referral alleging that M.C. and A.C. were present during a physical fight between mother and father. Social workers responded to the home, where they met with a Ceres police officer. The officer had responded to a domestic violence call and had placed both parents under arrest.

The residence was in disarray. There was no water to the home; clothes were strewn about; the home was filthy, with dirty dishes, debris, and dried feces. The officer stated the home had been condemned until water service was restored. A.C. had been found holding a bottle of prescription medication; the child safety cap was not working properly. The officer had to take the medication away from the child. M.C. stated she was very hungry and could not recall the last time they ate. A.C. had "significant" diaper rash. Father excused A.C.'s condition by claiming she had "sensitive skin" and M.C.'s claim of hunger by stating the girls were "picky eaters."

¹ References to code sections are to the Welfare and Institutions Code, unless otherwise specified.

Father claimed to be suffering from chronic pain resulting from fibromyalgia and a back injury. He also reported suffering from anxiety, depression, and type II diabetes, which was why there were needles in the home. Father claimed mother was the aggressor in the domestic violence situation and that mother bruised easily because of her anemia. He also stated mother has bipolar disorder and was not taking her medication.

The two girls were placed into protective custody on March 15, 2016. A section 300 petition was filed on behalf of the girls on March 17, 2016. At the detention hearing, counsel were appointed for mother, father and the girls. The juvenile court ordered the girls detained. The combined jurisdiction and disposition hearing was scheduled for April 20, 2016.

The jurisdiction and disposition report revealed that the girls had a half-sister, who lived with her father and visited mother on weekends. This child reported there was not always food in the house and her younger siblings did not always have clean clothing to wear. The child reported that father had hit her in the past; mother drinks a lot; and “mom just acts crazy.” The child did not feel safe in mother’s and father’s home. When M.C. was interviewed, she reported that mother and father “fight all day.”

The jurisdiction and disposition report disclosed that the agency had received 18 referrals on mother and father between July 2014 and February 2016, mostly focused on mother’s three older children. Voluntary services were provided between April 23, 2014, and July 31, 2014. Services also were provided in October 2014 and again in December 2015. In February 2016, the agency received a referral that M.C. had missed 17 consecutive days of school. Both mother and father had a criminal record.

The report concluded that there were “significant drug addiction, domestic violence problems, and untreated mental health problems” in the family resulting in the physical neglect of the children. The agency expressed concern if the girls were to be placed in the care of either parent.

The initial case plan objectives for father included staying sober and demonstrating an ability to live free of alcohol dependency; staying free of illegal drugs and demonstrate an ability to live free of drug dependency; obtaining and maintaining a suitable residence for himself and the girls; and meeting the physical, emotional, medical, and educational needs of the girls. The case plan, or reunification plan, provided that father was to participate in a mental health assessment and any recommended services; complete a domestic violence program; complete a parenting program; and submit to a substance abuse assessment, complete all recommended substance abuse programs, and submit to random drug testing.

On April 20, 2016, father signed a waiver of rights form and submitted the petition on the basis of the social worker's report and other documents. The juvenile court declared the girls to be dependents of the juvenile court and made a CASA referral. The proposed reunification plan was approved and adopted by the juvenile court. A six-month review hearing was set for October 11, 2016. Father and mother were provided with written notice that if they did not make "meaningful efforts" to comply with the reunification plan so that the girls could be returned to parental custody, a section 366.26 hearing could be set to terminate parental rights.

The agency noticed a progress review hearing for July 21, 2016. The reunification plan for mother was amended and both parents were admonished to stay focused on completing the services ordered in the case plan.

The CASA report noted the girls were placed with their paternal aunt and uncle. The family was described as "very loving, patient, and attentive with the girls." The girls were described as "happy and doing well" in the placement. M.C. was having to repeat kindergarten because of poor attendance the prior school year. A.C. was not yet school age.

The status review report prepared for the six-month review hearing stated that father had been placed in a clean and sober living environment on September 19, 2016,

by Stanislaus Recovery Services. Father had failed to attend and participate in his parenting classes, and failed to complete his mental health, domestic violence, and anger management assessments. Father claimed he had an appointment for a mental health assessment.

Father had participated in substance abuse treatment, however, his progress was “slow” because of “his focus on significant other.” Father had also tested positive multiple times for drugs. Father also failed to test on at least two occasions.

Service providers had reported that “both parents are not able to concentrate and focus on their recovery because they continue to be enmeshed in their relationship with one another.” The social worker had advised mother and father repeatedly to focus on their case plan components.

The social worker opined that the children “need permanency in a home where their needs are the first priority.” While both parents professed to love their children, the social worker opined that “love is not enough,” and neither parent had demonstrated an ability to care for themselves, let alone their children. The social worker was of the opinion neither parent could demonstrate they could provide for the children’s needs and keep the children safe; and neither parent had addressed the concerns that caused the removal of the children. The social worker stated “[i]t does not appear that if given six more months of services, that the parents would successfully reunify.”

The agency recommended the juvenile court find that the progress father and mother had made was “poor.” The agency also recommended that reunification services be terminated, and a section 366.26 hearing be set.

A contested six-month review hearing was held on October 27, 2016. At that time, the agency changed its recommendation as to father and stated it was recommending continued reunification services for father. The juvenile court added another component to father’s plan, codependency counseling.

The juvenile court stated father was “very close” to having reunification services terminated and that his progress henceforth had to be “excellent.” When asked if he had any questions about what was expected of him under the reunification plan, father replied, “No.” The juvenile court terminated reunification services for mother. Father’s reunification services were continued.

On February 3, 2017, the agency filed a section 388 petition asking that reunification services for father be terminated. The matter was scheduled to be heard on February 28, 2017. The juvenile court put the matter over to April 13, 2017, to be heard with the 12-month review hearing.

The status review report prepared by the agency for the 12-month review hearing recommended reunification services to father be terminated, and a section 366.26 hearing be set. The status review report stated that father was residing in the Salvation Army homeless shelter and had minimally participated in his case plan.

The agency reported that father had not completed anger management, domestic violence, mental health, or clinical assessments as called for in the plan. Father had completed some of the substance abuse component and had submitted a list of his prescription medications. When speaking with the social worker, however, father claimed he was “doing everything he is supposed to be doing.” Father had quit the job he had because it was only offering him two days of work per week. The social worker opined that father had not made substantive progress in his case plan.

At the April 13, 2017, 12-month review hearing, the agency withdrew its section 388 motion and orally requested that services to father continue. The agency stated that father was now engaged in codependency services and wanted him to have an opportunity to complete that counseling. The agency would continue to monitor the case.

The juvenile court expressed concern that father had no-shows for appointments and was doing “just enough.” The juvenile court told father that he needed to have “excellent progress,” attend all his classes, and no more no-shows. Father indicated he

understood. The juvenile court stated that the girls “need to have a father who is fully engaged and not just enough engaged.”

The juvenile court found that father’s progress on the case plan was “just enough.” Reunification services were ordered to continue for father. The girls were continued in out-of-home placement. An 18-month review hearing was set for September 7, 2017.

The status review report for the 18-month review hearing once again recommended termination of father’s reunification services. The girls had been moved from the home of relatives to a foster home on August 8, 2017, when the relatives became unable to care for them. Father had failed to complete all his parenting classes and had been a no-show for several appointments for other services. Father still had not completed the anger management or clinical assessments; and had not completed codependency counseling, the parenting classes, or all of the substance abuse treatment. Father had not obtained housing where the girls could live with him. After 18 months of services, father had not completed his case plan.

On September 7, 2017, the matter was continued to September 29 for a contested hearing. At the September 29 hearing, the juvenile court found that father’s progress on the case plan was “limited.” The matter was continued again to December 1, 2017.

At the December 1 hearing, the agency argued that the “reports really speak for themselves.” Father had 18 months to complete his case plan and father failed to complete components of his plan. Father had missed drug tests, but also tested positive for methamphetamine when he did test. The agency argued that continued substance abuse, failure to complete components of his case plan, and father’s “lack of willingness” to work with the agency to complete his case plan and comply with court orders, warranted termination of reunification services and the setting of a section 366.26 hearing.

Father’s counsel argued that the agency had not done enough to assist father with finding adequate housing and objected to the termination of reunification services and the

setting of a section 366.26 hearing. If a section 366.26 hearing was set, father's counsel wanted the agency to pay for a bonding study.

The juvenile court noted the concerns raised in the reports filed by the agency and father's positive drug test for methamphetamine within a month prior to the December 1 hearing. The juvenile court found that father made "very limited progress," adopted the agency recommendations, and terminated reunification services. The juvenile court did not order the agency to conduct a bonding study, as father had requested.

The agency prepared a social study for the section 366.26 hearing. That social study noted that father had not demonstrated that he could refrain from violent behavior; father had been terminated on November 6, 2017, from his job because he assaulted a homeless person. Father had not demonstrated the ability to safely parent his girls; he took them from the location of visits without permission; and drove them around without having them in car seats. The agency also noted that father tested positive for methamphetamine at the inception of the dependency and was positive for methamphetamine just prior to December 2017. The agency opined that father has not been able to remain free of illegal substances. If parental rights were terminated, the current caregivers wanted to adopt the girls.

At the March 27, 2018, section 366.26 hearing, the juvenile court found that the progress made by each parent was "poor" and the agency had complied with the case plan by offering reasonable services. The matter was continued to June 28 for a contested section 366.26 hearing.

At the June 28 contested section 366.26 hearing, father testified that when he visited with the children, he would "joke around and play," listen to them, and ask about school. He described it as a "child-like environment" and they would "just play around." Father maintained the girls were unhappy when visits ended and did not want to leave him. Father wanted "another opportunity" so he "can be a great dad."

Counsel for the girls opined that the girls were in a safe home, the caretaker is doing a good job of bonding with the girls, and the girls were doing well where they are. Counsel also stated, however, that the girls loved father.

Father's counsel argued that father fell within the beneficial parent-child relationship exception to termination of parental rights. Counsel argued that father's visits with the children "go very well" and are "more than playdates." Father loved his children.

In its June 28, 2018 ruling, the juvenile court noted that the girls "have been moved a number of times." The girls had been out of parental custody for about 26 months and had been with the current caregivers for around nine months. The juvenile court opined that there might be some detriment to the girls if father's parental rights were terminated. The juvenile court found, however, that termination of parental rights would not be detrimental to the children, terminated the parental rights of mother and father, and ordered adoption as the permanent plan.

Father filed notices of appeal on August 13, 2018. Mother filed an appeal on August 20, 2018.

DISCUSSION

Father contends the order terminating his parental rights must be reversed because the evidence established the beneficial parent-child relationship exception. Mother contends that if the order terminating parental rights is reversed as to father, it should be reversed as to her, too.

Parent-Child Benefit Exception

Once reunification services are ordered terminated, the focus shifts to the needs of the child for permanency and stability. If the child is likely to be adopted, adoption is the norm. Indeed, the court must order adoption and its necessary consequence, termination of parental rights, unless one of the specified circumstances provides a compelling reason

for finding termination of parental rights would be detrimental to the child. (*In re Celine R.* (2003) 31 Cal.4th 45, 53.)

Although section 366.26, subdivision (c)(1) acknowledges termination may be detrimental under specifically designated circumstances, a finding of no detriment is not a prerequisite to the termination of parental rights. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1347.) It is the parent's burden to show termination would be detrimental under one of the exceptions. There is a strong preference for adoption. (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 809.) When a juvenile court rejects a detriment claim and terminates parental rights, the appellate issue is whether the juvenile court abused its discretion. (*In re Jasmine D.*, *supra*, at p. 1351.)

For the section 366.26, subdivision (c)(1)(B)(i) exception to apply, known as the beneficial relationship exception, the relationship between parent and child must promote the well-being of the child to such a degree that it outweighs the well-being of the child in a permanent home with adoptive parents. The juvenile court balances the strength and quality of the natural parent-child relationship in a tenuous placement against the security and sense of belonging a new family would confer. If severing the natural parent-child relationship would deprive the child of a substantial and positive emotional attachment so that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.)

Interactions between the natural parent and child will always confer some incidental benefit to the child. The significant attachment from child to parent results from the adult's attention to the child's needs for physical care, comfort, affection, and stimulation. The relationship arises from day-to-day interaction, companionship, and shared experiences. The exception applies only where the court finds regular visits and contact have continued or developed a significant, positive, emotional attachment from child to parent. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

The factors to consider when testing whether a parental relationship is important and beneficial include the age of the child, the portion of the child's life in the parent's custody, the positive or negative effect of interaction between the parent and child, and the child's particular needs. The relationship must be such that the child would suffer detriment from its termination. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 467.) Father failed to show how M.C. and A.C. would suffer detriment from the termination of his parental rights.

Analysis

Father testified he played with the girls during visits, asked about school, and asked how they were doing during supervised visits. The parent bears the burden of showing more than loving contact and pleasant visits. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 953-954.) The parent has the burden of proving the statutory exception applies. (*In re Breanna S.* (2017) 8 Cal.App.5th 636, 646.) A biological parent who has failed to reunify with an adoptable child, as was the case here, may not derail adoption merely by showing the child would derive some benefit from continuing the parent-child relationship during periods of visitation. (*In re Jason J.* (2009) 175 Cal.App.4th 922, 937.)

Father needed to demonstrate he occupied a parental role in M.C.'s and A.C.'s lives resulting in a significant, positive, emotional attachment from child to parent. (*In re Breanna S., supra*, 8 Cal.App.5th at p. 648.) Here, evidence of such a relationship was absent or inadequate. Before the petition was filed, father had failed to provide an adequate home environment for the girls. Father engaged in domestic violence with mother in front of the children; the home itself was filthy and without water; the girls did not have adequate food; and prescription drugs were available where the girls could access them, posing a risk.

Father tested positive for methamphetamine at the inception of the case, tested positive for drugs multiple times during the dependency case, and failed to test on other

occasions. Father tested positive for methamphetamine within a month of December 1, 2017, when reunification services were terminated.

After 18 months of reunification services, father failed to complete components of his plan. Father also continued to engage in assaultive behavior; he assaulted a homeless person on November 6, 2017, and lost his job as a result.

The girls were taken into protective custody on March 15, 2016. The contested section 366.26 hearing was held on June 28, 2018, two years later. The girls had not been in the custody of their parents for slightly over two years by the time of the section 366.26 hearing. Here, the evidence father occupied a crucial parental role in M.C.'s and A.C.'s lives was inadequate. (*In re L.Y.L.*, *supra*, 101 Cal.App.4th at p. 954.)

Father failed to show detriment or harm if the parent-child relationship ended. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) Father testified that he loved the children and wanted “another opportunity” to “be a great dad.” Father had received 18 months of reunification services, during which he could have demonstrated his willingness and desire to be a “great dad” by staying free of drugs, not engaging in assaultive behavior, and completing his case plan.

Father did not meet his burden of establishing that M.C. and A.C. would suffer great detriment if his parental rights were terminated, such that it outweighed the children's need for security and stability. The girls had been with their current caregivers for about nine months; the caregivers wanted to adopt the girls. The juvenile court did not abuse its discretion in terminating parental rights and allowing M.C. and A.C. to be adopted. (See *In re Celine R.*, *supra*, 31 Cal.4th at p. 53.)

Mother argued that if father was successful in his appeal, that would be grounds for reversing mother's termination of parental rights so that M.C. and A.C. would maintain a relationship with both father and mother. However, we have rejected father's contention and therefore, reject this argument of mother.

DISPOSITION

The order terminating mother's and father's parental rights to M.C. and A.C. and setting a permanent plan of adoption is affirmed.